

1 HONORABLE RONALD B. LEIGHTON  
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10 UNITED STATES DISTRICT COURT  
11 FOR THE WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA  
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15 RAUL VIRAMONTES, individually and  
16 on behalf of all others similarly situated,  
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18 Plaintiff,  
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20 v.  
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22 MCLANE COMPANY, INC. DBA MCLANE  
23 NORTHWEST, a Texas corporation,  
24  
25 Defendant.  
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Case No. 3:18-cv-05909-RBL

**STIPULATED MOTION AND ORDER  
STAYING CASE PENDING  
WASHINGTON SUPREME COURT'S  
RESOLUTION OF CERTIFIED  
QUESTION IN *SAMPSON v. KNIGHT  
TRANSPORTATION, INC.***

## RECITALS

**WHEREAS**, on or about October 5, 2018, Plaintiff Raul Viramontes (“Plaintiff”) filed a putative Class Action Complaint (the “Complaint”) in the Superior Court of the State of Washington in and for Pierce County [Dkt. #1-1];

**WHEREAS**, on November 7, 2018, Defendant McLane Company, Inc. d/b/a McLane Northwest (“Defendant”) removed Plaintiff’s above-described state court action to this Court [Dkt. #1] invoking the subject matter jurisdiction of this Court under the Class Action Fairness Act (“CAFA”), which the parties agree is properly invoked in this action;

**WHEREAS**, in conjunction with its Notice of Removal of Civil Action [Dkt. #1], and pursuant to LCR 3(g), Defendant filed a Notice of Related Case, identifying *Eilerman v. McLane Company, Inc. dba McLane/Northwest*, W.D. Wash. Case. No. 3:16-cv-05303-BHS (the “*Eilerman Action*”), as a related case previously pending in this District and detailing the class action settlement to which the parties agreed and the Court (Settle, J.) approved in resolving that action [Dkt. #3];

**WHEREAS**, Plaintiff was a settlement class member who participated in the *Eilerman* Action settlement, and, in order to avoid protracted litigation of *res judicata* issues related to the release and settlement class period agreed upon in that approved settlement, Plaintiff irrevocably agrees that the putative class and limitations periods applicable to Plaintiff's individual and putative class action claims that are or may be asserted in *this* action, for all purposes including discovery and should class certification be sought, will commence no earlier than on January 1, 2017, immediately after the end of the release period applicable to the *Eilerman* Action settlement, rather than on October 5, 2015 as alleged in Plaintiff's Complaint [see Dkt. #1-1, ¶ 15];

**WHEREAS**, in his Complaint, Plaintiff also alleges that in *Carranza v. Dovex Fruit Co.*, 190 Wash.2d 612 (2018) (“*Carranza*”), the Washington Supreme Court “held that employers who pay agricultural workers on a piece-rate basis must compensate the workers on a separate hourly basis for time spent performing activities that are outside the scope of the piece rate picking work” and that “Defendant’s piece-rate compensation system is virtually indistinguishable from the piece rate scheme in *Carranza*” [Dkt. #1-1, ¶ 12];

1       **WHEREAS**, based upon Plaintiff's interpretation of *Carranza*, the Complaint asserts two  
2 causes of action for (1) Violations of RCW 49.46.020, 090 for Failure to Pay Minimum Wage for All  
3 Hours Worked, and (2) Double Damages for Willful and Intentional Withholding of Wages Pursuant  
4 to RCW 49.52.050, 070 Flowing from Cause of Action One [*id.*, ¶¶ 24-30];

5       **WHEREAS**, in support of his First Cause of Action, Plaintiff alleges that "Defendant paid  
6 its truck drivers on a piece-rate scheme under which it did not compensate truck drivers for non-  
7 driving tasks as required under Washington law," including, but not limited to, "pre-and post-trip  
8 inspections, detention time, and fueling," and asserts that "Plaintiff seeks relief on a class-wide basis  
9 for unpaid wages for non-driving tasks...." [*id.*, ¶¶ 2-3, 11-12, 27];

10      **WHEREAS**, in *Sampson v. Knight Transportation, Inc.*, 2018 WL 2984825, at \*8 (W.D.  
11 Wash. June 14, 2018) (Coughenour, J.) ("*Sampson*"), currently pending in this District, the plaintiffs  
12 similarly contend that the defendant's piece-rate compensation scheme violates Washington's  
13 Minimum Wage Act (the "MWA") because "drivers are not paid minimum wage for the time they  
14 spend conducting pre-trip inspections, completing paperwork, loading and unloading the truck, and  
15 refueling";

16      **WHEREAS**, in *Sampson*, 2018 WL 2984825, at \*9, the Court recognized that "[c]ourts in  
17 this district ... have previously held that Plaintiffs' on-duty, not driving claim are not cognizable  
18 under Washington law," but it reasoned that "these prior holdings are called into question by the  
19 Washington Supreme Court's recent ruling in [*Carranza*]," on the grounds that the Washington  
20 Supreme Court's "interpretation of the MWA would seem to apply to all employers," not just  
21 agricultural workers;

22      **WHEREAS**, the district court in *Sampson* "conclude[d] that the law underlying Plaintiffs' on  
23 duty, not driving claim is not clearly determined, and that the Washington Supreme Court is in a  
24 better position than this Court to answer this question," *see id.*, and therefore certified the following  
25 question to the Washington Supreme Court: "Does the Washington Minimum Wage Act require non-  
26 agricultural employers to pay their piece-rate employees per hour for time spent performing activities  
27 outside of piece-rate work?";

1       **WHEREAS**, the parties agree that the Washington Supreme Court's resolution of the  
2 question certified in *Sampson* could directly impact the disposition of Plaintiff's claims asserted in  
3 this action, which assert an on-duty, not driving time unpaid wages claim similar to that asserted by  
4 the plaintiffs in *Sampson*; and

5       **WHEREAS**, the parties' agree that a stay of this case pending the Washington Supreme  
6 Court's resolution of the certified question in *Sampson v. Knight Transportation, Inc.* (Wash. S.Ct.  
7 Case No. 96264-2), which could bear directly upon Plaintiff's putative "on-duty, not driving" time  
8 unpaid wages claims in this action, would be prudent and efficient for both the Court and the parties.

## **STIPULATION**

10           **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between  
11 Plaintiff, on the one hand, and Defendants, on the other hand, by and through their respective  
12 undersigned counsel, and subject to the Court's approval, that:

1. This Court has subject matter jurisdiction over this action under CAFA;
  2. It is irrevocably agreed that the putative class and limitations periods applicable to Plaintiff's individual and putative class action claims that are or may be asserted in this action, for all purposes including discovery and should class certification be sought, will commence no earlier than January 1, 2017, immediately after the end of the release period applicable to the *Eilerman* Action Agreement, rather than on October 5, 2015 as alleged in Plaintiff's Complaint [see Dkt. #1-1, ¶ 15];

3. The dates set forth in the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. #7) and all other deadlines currently set in this action be vacated, including without limitation Plaintiff's deadline to move for class certification under LCR 23(i)(3);

4. This action be stayed, in its entirety and for all purposes, pending the Washington Supreme Court's decision on the certified question in *Sampson v. Knight Transportation, Inc.*, Wash. S.Ct. Case No. 96264-2;

5. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson*, the parties shall file a joint status report with the Court that (1) informs the Court regarding the Washington Supreme Court's Decision and (2) provides the Court with agreed-upon and/or proposed

1 deadlines for [a] Plaintiff's deadline to move for class certification under Fed. R. Civ. P. 23 and [b]  
2 the dates for initial disclosures and submission of the parties' Joint Status Report and Discovery Plan;  
3 and

4       6. Unless otherwise ordered by the Court in response to the parties' joint status report as  
5 referenced above, Plaintiff's presumptive deadline under LCR 23(i)(3) to move for class certification  
6 will commence running upon the Court lifting the stay of this action.

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8 DATED: November 16, 2018

9 /s/ India Lin Bodien

10 **Via electronic approval 11/16/18**  
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23 VIRAMONTES

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28 STIPULATED MOTION AND ORDER STAYING  
CASE - 5

CASE NO. 3:18-cv-05909-RBL

Respectfully submitted,

/s/ Kasey D. Huebner

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## **ORDER**

This matter came before the Court on the parties' Stipulation Staying Case Pending Ruling from Washington Supreme Court in *Sampson v. Knight Transportation, Inc.* (the "Stipulation"). The Court, having reviewed the Stipulation, and good cause appearing for the relief jointly sought therein, hereby orders as follows:

1. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act (“CAFA”);

2. In accordance with the parties' irrevocable agreement set forth in the Stipulation, the putative class and limitations periods applicable to Plaintiff's individual and putative class action claims that are or may be asserted in this action, for all purposes including discovery and should class certification be sought, will commence no earlier than on January 1, 2017, immediately after the end of the release period applicable to the approved class action settlement in *Eilerman v. McLane Company, Inc. dba McLane/Northwest*, W.D. Wash. Case. No. 3:16-cv-05303-BHS (the "Eilerman Action"), rather than on October 5, 2015 as alleged in Plaintiff's Complaint [see Dkt. #1-1, ¶ 15];

3. The dates set forth in the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. #7) and all other deadlines currently set in this action shall be and hereby are vacated, including without limitation Plaintiff's deadline to move for class certification under LCR 23(i)(3);

4. This action shall be and hereby is stayed, in its entirety and for all purposes, pending the Washington Supreme Court's decision on the certified question in *Sampson v. Knight Transportation, Inc.*, Wash. S.Ct. Case No. 96264-2;

5. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson*, the parties shall file a joint status report with the Court that (1) informs the Court regarding the Washington Supreme Court's Decision and (2) provides the Court with agreed-upon and/or proposed deadlines for [a] Plaintiff's deadline to move for class certification under Fed. R. Civ. P. 23 and [b] the dates for initial disclosures and submission of the parties' Joint Status Report and Discovery Plan; and

1       6. Unless otherwise ordered by the Court in response to the parties' joint status report as  
2 referenced above, Plaintiff's presumptive deadline under LCR 23(i)(3) to move for class certification  
3 will commence running upon the Court lifting the stay of this action.

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5           **IT IS SO ORDERED.**

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7           DATED this 27<sup>th</sup> day of November, 2018.

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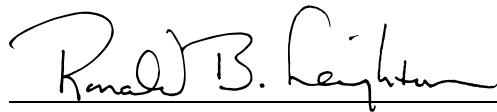
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Ronald B. Leighton  
United States District Judge